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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/824,434	04/02/2001	Charles A. Eldering	T721-22	8189

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EXAMINER

FISH, JAMIESON W

ART UNIT PAPER NUMBER

2617

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/824,434

Applicant(s)

ELDERING ET AL.

Examiner

Jamieson W. Fish

Art Unit

2617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 8-30-2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 25-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The information disclosure statement (IDS) submitted on 8-30-2005 has been considered by the examiner.

Response to Arguments

Applicant's arguments filed 08-30-2005 have been fully considered but they are not persuasive. The applicant argues that Picco does not teach "monitoring the communications network to determine, based on the state of the presentation device, whether the selected unscheduled advertisements are presented to each of the one or more subscribers." Picco teaches that "data about local content being watched at a particular household 114 may be periodically communicated to the collect and decimate system 152 in the uplink facility over a communication link 154, such as a telephone line." (See Col. 7 lines 12-16). It is inherent that "data about local content being watched at a particular household" is based on the state of the presentation device. For example, if the state of the presentation device is non-operational, data is not going to be collected.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims **25-39** are rejected under 35 U.S.C. 102(b) as being anticipated by Picco et al (US 6,029,045).

1. Regarding claim **25**, Picco teaches a method of inserting unscheduled advertisements into a television programming stream in a communications network, the

Art Unit: 2617

method comprising (a) selecting one or more unscheduled advertisements to be presented at a presentation device to one or more subscribers to the communications network (See Figs. 9, 10 and Col. 13 lines 36-67, Col. 14 lines 1-16); (b) storing the unscheduled advertisements at a node of the communications network (See Figs. 9, 10 and Col. 13 lines 36-67, Col. 14 lines 1-16); (c) detecting intervals in said programming stream within which advertisements may be inserted (See Figs. 9, 10 and Col. 13 lines 36-67, Col. 14 lines 1-16); (d) inserting the unscheduled advertisements into said programming stream within the detected intervals (See Figs. 9, 10 and Col. 13 lines 36-67, Col. 14 lines 1-16); and (e) monitoring the communications network to determine, based on the state of the presentation device, whether the selected unscheduled advertisements are presented to each of the one or more subscribers (Col. 6 lines 57-67, Col. 7 lines 1-32).

2. Regarding claim **26**, Picco teaches the method further comprising: (f) selecting different unscheduled advertisements to be presented to the one or more subscribers based on the monitoring in step (e) (See Figs. 9, 10 and Col. 7 lines 32-67, Col. 8 lines 23, Col. 13 lines 36-67, Col. 14 lines 1-16).

3. Regarding claim **27**, Picco teaches the method further comprising: (f) inserting the unscheduled advertisements into a different programming stream based on the monitoring in step (e) (See Figs. 9, 10 and Col. 7 lines 32-67, Col. 8 lines 23, Col. 13 lines 36-67, Col. 14 lines 1-16).

4. Regarding claim **28**, Picco teaches wherein the unscheduled advertisements are inserted into said programming stream in accordance with a pre-determined order (See

Col. 8 lines 16-22, Col. 10 lines 13-18 Control signals can determine which type of advertisement (i.e. car) is shown during a particular time slot thus invoking a pre-determined order. The advertisements remain unscheduled because the advertisement of the specified type that is shown is not associated with program content).

5. Regarding claim **29**, Picco teaches the method further comprising: (f) reporting the results the monitoring in step (e) (See Fig. 4 Statistics Collector 152 and Col. 6 lines 57-67, Col. 7 lines 1-32).

6. Regarding claim **30**, Picco teaches an advertisement insertion system for inserting unscheduled advertisements into a television programming stream in a communications network, the system comprising: an advertisement selector, configured to select one or more unscheduled advertisements to be presented at a presentation device to one or more subscribers to the communications network (See Fig. 4 Scheduler 148 and Col. 7 lines 32-67, Col. 8 lines 1-6); an advertisement storage medium located at a node of the communications network, the storage medium containing the unscheduled advertisements (See Fig. 3 186 Disk and Col. 6 lines 17-4, Col. 9 lines 40-52); an insertion processor configured to detect intervals in said programming stream within which advertisements may be inserted and insert the unscheduled advertisements into said programming stream within the detected intervals (See Fig. 3 CPU 188 and Fig. 10 Step 254 and Col. 13 lines 66-67, Col. 14 lines 1-16); and a monitor processor configured to monitor the communications network to determine, based on the state of the presentation device, whether the selected unscheduled advertisements are presented to each of the one or more subscribers (See

Fig. 3 CPU 188, Col. 6 lines 57-67, Col. 7 lines 1-32 Data about which advertisements have been viewed is transmitted from the STB to the statistic collector).

7. Regarding claim **31**, Picco teaches wherein the advertisement selector selects different unscheduled advertisements to be presented to the one or more subscribers based on an output of the monitor processor (See Col. 7 lines 33-67, Col. 8 lines 1-7).

8. Regarding claim **32**, Picco teaches wherein the insertion processor is configured to insert the unscheduled advertisements into a different programming stream based on an output of the monitor processor (See Col. 13 lines 66-67, Col. 14 lines 1-16).

9. Regarding claim **33**, Picco teaches wherein the unscheduled advertisements are inserted into said programming stream in accordance with a pre-determined order (See Col. 8 lines 16-22, Col. 10 lines 13-18 Control signals can determine which type of advertisement (i.e. car, watch, etc.) is shown during a particular time slot thus invoking a pre-determined order. The advertisements remain unscheduled because the specific advertisement of the specified type that is shown is not determined until the ahead of time).

10. Regarding claim **34**, Picco teaches wherein the monitor processor is configured to report the results of the monitoring (See Fig. 4 Statistics Collector 152 and Col. 6 lines 57-67, Col. 7 lines 1-32).

11. Regarding claims **35-39**, claims **35-39** are article of manufacture comprising a computer-readable medium holding computer-executable instructions that execute the methods of claims 25-29, respectively. Thus claims **35-39** are discussed and rejected according to claims 25-29, respectively.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamieson W. Fish whose telephone number is 571-272-7307. The examiner can normally be reached on Monday-Friday, 8:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on 571-272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JF 10-17-2005


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